REMARKS

This Amendment, filed in reply to the Office Action dated August 6, 2008, is believed to be fully responsive to each point of rejection raised therein. Accordingly, reconsideration and allowance are respectfully requested.

I. Summary of the Office Action

Claims 1-21 are pending in the application.

Claims 1-6, 12-15, and 21 have been rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent Pub. No: 2002/0159480 to Sekihata Osamu *et al.* ("Sekihata").

Claims 7, 9-11, 16, and 18-20 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Sekihata, in view of U.S. Patent No: 6,496,519 to Russell *et al.* ("Russell").

Claims 8 and 17 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Sekihata, in view of Russell, and further in view of U.S. Patent No: 6,195,332 to Wen-Tsung Tang.

II. Response to Arguments Submitted with the RCE

The Examiner alleges that "Applicant's arguments filed on 06/30/2008 [*i.e.*, Request for Continued Examination (RCE)] have been fully considered but they are not persuasive" (Office Action at page 13).

In the RCE, Applicant noted that Sekihata was strictly limited to the Ethernet protocol, and thus, Sekihata does not disclose or suggests "configuring said rate regulator with said respective overhead criterion to charge for uncounted overhead, ... wherein said uncounted

overhead comprises overhead from a plurality of network data protocols" (Office Action at page 9; emphasis added).

In response, the Examiner alleges that, because Sekihata refers to Media Independent Interface (MII), Reduced MII (RMII), and Gigabit MII (GMII), Sekihata discloses charging for overhead wherein said uncounted overhead comprises overhead from a plurality of network data protocols (Office Action at page 14). As best understood, the Examiner alleges that the ability of regulating a data rate over a number of standardized interfaces (*e.g.*, MII) is "equivalent" to the features above because "different interfaces/protocols result in different overheads" (Office Action at page 14). Applicant respectfully disagrees.

Applicant notes that the purpose of the interface standards mentioned by Sekihata, and referred to by the Examiner (*i.e.*, MII, RMII, and GMII) "is to provide a simple, inexpensive, and easy-to-implement interconnection between Media Access Control (MAC) sublayers and PHYs [physical layers] for data transfer at 10 Mb/s and 100 Mb/s, and between Station Management (STA) and PHY entities supporting data transfer at 10 Mb/s or above" (*see* http://standards.ieee.org/getieee802/download/802.3-2005_section2.pdf ("IEEE 802.3 MII") at pp. 9-48). "The MII is designed to make the differences among the various media absolutely transparent to the MAC sublayer (*see* IEEE 802.3 MII at page 11).

However, although these standards arguably relate to network traffic control, they are not network data protocols. Accordingly, Applicant respectfully submits that Sekihata's reference to these standards, without more, fails to disclose, or even suggest, that Sekihata's method configures a "rate regulator with said respective overhead criterion to charge for uncounted

overhead, ... wherein said uncounted overhead comprises overhead from a plurality of network data protocols", as recited in claim 1.

In addition, Applicant notes that the interface standards above do not produce or add network traffic overhead. Instead, they standardize an interface through which network traffic is transferred (*see* FIG. 7A and ¶¶ 0069-0071). Thus, because they do not produce network traffic overhead, they cannot disclose or suggest uncounted overhead comprising "overhead from a plurality of network data protocols", as recited in claim 1.

At least for the reasons above, Applicant respectfully submits that claim 1 is patentable over Sekihata.

III. Cited Art Rejections

With respect to **claim 1**, at least for the reasons above, Applicant respectfully submits that Sekihata does not disclose or suggest all the features recited therein. Furthermore, claims 1 has been amended to further describe elements of the invention. Accordingly, Applicant respectfully submits that claim 1 is also patentable for its additionally recited elements.

For example, the cited art of record does not disclose or suggest a system in which "each data packet transmitted through said rate regulator is transmitted to said egress port as a packet containing said uncounted overhead as determined by said overhead criterion, thereby ensuring that said regulator bandwidth does not exceed said egress port bandwidth", as recited in claim 1.

In particular, although Sekihata accounts for IPG overhead, because Sekihata relates to Ethernet networks, the IPG overhead is actually sent through the network. In other words, the IPG would not be removed from the data packet during transmission through the Ethernet

network because it is required within an Ethernet network. On the other hand, when data is transmitted through other network protocols, the IPG is removed from the data packet, and is later added at the egress port (*see* specification at page 2, ll. 9-22). The claimed invention treats each packet as if it contained the overhead data, thus preventing providing more data to the egress port than it would be able to transmit due to the addition of the IPG. This element of the claimed invention is not anticipated, nor suggested, by Sekihata.

For this additional reason, Applicant respectfully submits that claim 1 is patentable over Sekihata.

Furthermore, Applicant respectfully submits that the additionally cited art of record does not remedy Sekihata's deficiencies. In particular, the Examiner refers to Russell as allegedly disclosing several particularities of Ethernet and non-Ethernet networks (*see* Office Action - Claim Rejection Under 35 U.S.C. § 103; pages 9-13). The Examiner further refers to Wen-Tsung Tang as allegedly disclosing additional particularities of Ethernet-based networks (*see* Office Action - Claim Rejection Under 35 U.S.C. § 103; pages 12-13).

However, even assuming, *arguendo,* that Russell and Wen-Tsung Tang disclose these elements of the present invention, Applicant respectfully submits that Sekihata, either alone or in combination with Russell and Wen-Tsung Tang, does not teach or suggest, "configuring said rate regulator with said respective overhead criterion to charge for uncounted overhead, ... wherein said uncounted overhead comprises overhead from the plurality of network data protocols", as recited in amended claim 1.

Furthermore, Applicant respectfully submits that Sekihata, either alone or in combination with Russell and Wen-Tsung Tang, do not teach or suggest: "whereby each data packet

transmitted through said rate regulator is transmitted to said egress port as a packet containing said uncounted overhead as determined by said overhead criterion, thereby ensuring that said regulator bandwidth does not exceed said egress port bandwidth, ... wherein said each data packet enters said network through said ingress port and exits said network through said egress port", as recited in amended claim 1.

At least for these reasons, Applicant respectfully submits that the cited art of record does not teach or suggests all the elements of amended claim 1.

With respect to **claim 12**, for reasons analogous to those above regarding claim 1, applicant respectfully submits that claim 12 is patentable over Sekihata.

With respect to **claims 2-11 and 13-21**, Applicant respectfully submits that these claims are patentable, at least by virtue of their respective dependencies, but also for their additionally recited features.

IV. Claim Amendments

By this Amendment, Applicant amends claims 1, 2, 4-6, 8, 10-15, 17, and 19-21 for purposes of clarity and consistency.

V. Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

/Christopher R. Lipp/
Christopher R. Lipp
Registration No. 41,157

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

WASHINGTON OFFICE
23373
CUSTOMER NUMBER

Date: December 8, 2008